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ABSTRACT

This paper concerns different aspects of four dilemmas of objectivity and bias facing expert witnesses in trials involving violence between intimates: (1) the urge to be correct, clever, and consistent; (2) the tension between being an advocate and being an educator in the courtroom; (3) the influence of experts' life experiences and presumed values on the content and reception of testimony; and (4) the bias that has resulted from family violence researchers' neglect of social class as a significant contributor to the experiences of battered women. Four examples are used to illustrate these aspects. With regard to the fourth diliemma, data is presented on the relationship between social class and criminal justice system outcome for 25 battered women who killed their abusers. The difficulty in transcending class issues and achieving a real understanding of the impact of battering by an intimate in the lives of women of different backgrounds is recognized and the need to separate social class issues from dangerousness concerns is stressed. (NB)

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Expert Testimony for Battered Women Who Kill: Dilemmas of Objectivity and Bias

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My talk today is constructed around four examples that I hope will illustrate different aspects of dilemmas of objectivity and bias in trials involving violence between intimates. The first dilemma has to do with the urge to be correct, clever and consistent, the second with the tension between being an advocate and being an educator in the adversarial environment of the courtroom, the third with the influence of experts' life experiences and presumed values on the content and the reception of their testimony and the fourth with the bias that has resulted from family violence researchers' neglect of social class as a significant contributor to the experiences of battered women. With regard to this last concern, I have data to present on the relationship between social class and criminal justice system outcome for 25 battered women who killed their abusers.

The first example comes from a case in which a young woman was seriously injured as a result of her boyfriend's action. The other three involve cases of battered women who killed their abusers.

Recently, an attorney was preparing me to testify at a deposition. I was going to be asked questions by the attorneys representing the other side in a civil suit. The basis for the suit involved an episode of alleged abuse in a dating

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relationship that occurred in a college dormitory. The girl had complained to the dormitory authorities, but they did not act to remove the boy from the dormitory or even from her floor. About two months after the complaint, the boy attempted to prevent the girl from getting away from him. He tackled her around the knees. She pitched forward and cracked her head on the floor. Three months later, she awakened from a coma with lasting neurological damage.

I was to testify about the nature of abuse in dating relationships and to offer the opinion that the dormitory had not acted with sufficient regard for the girl's well being. However, the boy denied that he was responsible for the girl's fall. The lawyer for the girl asked me this, "If the boy's lawyer asks you if you would change your opinion of the situation if you discovered that the boy had not ever abused this girl, what would you say?" I hesitated for a moment. He continued, "You would say, of course, that it would change your opinion." He wanted to be sure that I did not become so ego-involved in holding one view that I would fail to admit that a total change in what I believed to be the facts would change my opinion. While I might want to be outraged at this suggestion that my opinion had a life of its own, and would not be changed by new and contradictory facts, I have at times found myself thinking about ways of holding onto my original opinion, even as I was being presented with a fact pattern that would make my opinion untenable. I believe I have so far resisted that urge to reconstruct reality

so as to hold onto my opinion, but I have felt it as I sat in the witness box. I am certain that some of the prosecutors who cross examined me would disagree with my belief that I resisted that urge. And, arguably, I am not the best judge of my own objectivity, in spite of my great wish to be objective.

When I admit to a change in my position, I must also admit to a certain inner reluctance. That reluctance is not based in science, which is intensely self-critical by nature. Instead, it is my human nature, my wish to be clever, correct and consistent that is at the heart of this dilemma.

A second example: Once, at the end of my expert testimony in the case of a battered woman who killed her husband, the defense attorney asked, "Was she justified in killing him?" The prosecutor objected, but was overruled by the judge, who turned to me and said, "Doctor, I am interested in hearing the answer. Was this killing justified?"

During the suspended moment between that question and my answer, I felt my life, my politics, my feminism, my personal commitment to non-violence in families flash by. My knowledge of the social scientific literature on family violence, my own research in this area had not adequately prepared me for this question. My knowledge of the law had led me to believe that I could not ever be asked this crucial question -- that the answer fell within the jurors' province. However, the judge more than allowed the question to be asked and answered; he encouraged it.

So, I answered by outlining what the law says constitutes

justification -- the reasonable belief in imminent life-threatening injury -- and then spoke in her voice, with a qualification, "She would have believed her action was justified at the time, if she was indeed suffering from the effects of having been physically beaten in her own home over an extended period of time. I think she was a battered woman with the psychological characteristics I outlined earlier." While I made reference to the scientific literature, I have come to think that at that moment, I was an advocate offering an opinion with very little of the mantle of science left. The responsibility of being an expert witness in cases of battered women who kill their abusers felt especially heavy at that moment.

More generally, the distinction between advocate and educator becomes fine whenever a social scientist steps into the adversarial environment of the courtroom. It is not enough to describe a phenomenon. Experts' opinions and interpretations of the events are of greatest interest. That different experts may see the same events very differently leads to trials that come down to battles between experts.

The emphasis on interpretation and advocacy fosters the "hired gun" problem. This label is applied to those experts who seem always to testify for a particular position, regardless of the facts in any particular case. The presumption that this attribution about the expert will be believed by the jurors is reflected in the routine cross examination-question, "So, Doctor, how much are you being paid for your testimony?" The right

answer is that one is not paid anything for one's testimony, only for one's time. Even so, it always seems to me that jurors are disturbed to learn that "the truth" costs money. And, the more one is paid, the larger it seems is the damage to credibility. Being paid by only one side in a dispute, as is always the case, further heightens issues of bias and advocacy and undermines the perception of the expert as objective educator.

The problem with trying to be an educator and not an advocate in an adversarial context is largely structural, derived from the nature of the judicial system. However, a part of the problem must reside in the expert, who shows a willingness by her or his presence in a courtroom to shape opinions that go beyond science. There are researchers who avoid courtrooms for this very reason. There are some who believe that neither aggregate data analyses nor clinical experiences with other people lend themselves to explaining the behaviors of singular individuals. Thus, in a construction of the problem that is all dilemma and no resolution, the very choice to testify marks the beginning of advocacy.

The third example I want to consider pertains specifically to cases involving violence between intimates. Being an expert on intimate violence means being an expert on something that everyone knows something about. Therefore, expert witness credentials go beyond educational background, publications and professional memberships. I have been asked "Are you a battered woman?" In West Virginia, the defense attorney asked me to

review the history of where I had grown up. Luckily, I had been born in Illinois and raised for a little while in Tennessee and, importantly, was not always from New York. I have been asked if I am married, if I have children, how old I am.

One prosecutor quoted from the introduction to Lenore Walker's The Battered Woman, to discover if I was a feminist and/or a revolutionary. In Queens County, New York, where Archie Bunker provides the model for the prototypic juror, she asked if I saw "sexism as the underbelly of all human suffering." She asked if I saw the problems of battered women in terms of a feminist vision and if I was working to overthrow the existing social order.

While I do not like to answer such questions and feel somewhat offended and personally invaded by lawyers and judges (and presumably jurors) who seem to think they provide a relevant context for my opinions, my feeling is best understood, I think, as defensiveness. I do not want my testimony to be discounted because of the presumed influence of my own life experiences and values. However, especially here today, I want to acknolwedge the importance of making known potentially relevant life experiences, values and ideology in cases that involve violence between intimates. Certainly, when intense conflict and strong feelings toward intimates are at issue, the pure influence of "science" may be blunted by the relevant personal experiences of the expert. Further, the relevant personal experiences of everyone else will influence the process and will have particular

impact on the reception of the expert's testimony. Living through conflict and violence in an intimate relationship shapes one's sense of how such things happen "normally." However, these intuitive ideas about normal family relations are not always right and are often wrong. In fact, one of the three major bases for admitting expert, data based testimony on the battered woman syndrome is that the opinion of the expert goes beyond the ken of the average layperson. Thus, it is the presence of relevant, but not necessarily representative life experiences that argues for the inclusion of expert testimony at trial time. Presumably, accurate information can mitigate the impact of unrepresentative life experiences. However, no one would argue that values and beliefs held for a lifetime will be completely undone by expert testimony. Life experiences remain relevant and are still taken into consideration by the defense and proseuction. Logically, then, even experts who learn much from the data they study, must still show some effects of their life experiences, values and beliefs in their understandings of what they study.

The fourth concern I would like to raise with you pertains directly to the imapct of class on the experiences of battered women. Early in the ten year history of expert testimony on the battered woman syndrome, the women who received expert attention were not impoverished. The first case of a homicidal battered woman to get a lot of general publicity was the case of Francine Hughes, a white, working class woman, who set fire to her sleeping husband after he set fire to her college text books.

Farrah Fawcett played her in the TV movie. While her defense was insanity, the immediate shift away from that defense to legal choices that emphasized the reasonableness of the woman's act, caused her case to acquire special significance. It marked the end of an era.

Since 1978, and the beginning of the use of testimony on the battered woman syndrome, I have seen a "filtering down" effect in terms of the social class of the women whose lawyers have sought expert testimony. Still, there is an awareness on the part of these attorneys seeking expert testimony in cases of very poor women that their client presents problems for those of use who are experts on non-poor women. It seems to me that much of the psychology of the battered woman that is reflected in our existing literature is about women who for whom violence is confined to their marital relationship. Even if their life histories include other violent relationships, such violence is depicted serially. The image of multiple, simultaneous violent relationships or experiences is largely absent from the work on battered women.

When I hear an attorney say, "My client is not a typical battered woman, but I wonder if you can help her anyway," I understand this to mean that the woman is very poor and is part of a life style in which violence is rampant. In contrast to the battered women whose experiences we psychologists made "typical" through our work, very poor, atypical battered women are often the victims and sometimes the perpetrators of violence from many

sources. Their abusers are not only their husbands; they may also be abused by their mothers, siblings, neighbors and friends, to say nothing of their real and reasonable expectation that the police afford them little reliable protection.

Further, unlike the "typical" battered woman, these women do not endure their abuse in isolation; nor do they retreat into monogamy, passivity, or a class based notion of traditionality. In stark contrast to the depiction of battered women in much of the early work, I have come to know that some battered women are prostitutes. Some battered women abuse their children and some are involved in near lethal acts of violence against their abusers prior to the moment at which they do the thing that results in his death.

I believe the work of experts in this area, my own included, has been sadly classist and, as a result, not comprehensive or objective at all. Our definition of battered women who killed was not only too narrow, but was narrow in a way that directly reflected our own class perspective. For poor women who were fighting to stay alive in many ways and who also had to fight off abusive men, our work has not been illuminating. To acknowledge this weakness in our work is only a beginning. Much work remains to be done with regard to very poor battered women, an undertaking that requires the most astute collaboration with the women themselves, in order to understand how chronic violence has affected their psychologies.

I have data which address outcomes of my expert involvement

in battered women's cases -- both poor and not poor. The first four homicide cases in which I testified, between 1978 and 1981 all involved women who were not on welfare. All were acquitted. In 1982, I testified in my first case that involved a welfare recipient. In the five years since then I have testified nine times and have been involved in the dispostion of the case, but not testified 10 times. In the ten cases (including the first) in which I testified since 1982, seven resulted in acquittals. Four of the ten women were on welfare, one was convicted, the other three were acquitted. In the 10 cases in which I did not testify, 8 were on welfare, one supported herself and her child through prostitution. That is, in my non-testimony cases, 90% were on welfare or were welfare class. Two of these women who were on welfare went to trial and were acquitted completely or substantially. Of the remaining eight women, two pled guilty to very reduced charges and received probation as their sentences. One of these women was white and middle class. The other was poor and black. However, her case received very special attention from two attorneys, one from the New York Civil Liberties Union, and was handled in an unusually caring way. The other six women were black, four were on welfare. Each chose not to stand trial and pled guilty to a charge which carried jail time, with a minimum sentence of 2-6 years and a maximum of 4-12 years across this group.

It is not accidental that so many of the women for whom I did not testify were welfare class or that they went to jail more

often than women who "fit" the syndrome, for whom I was able to testify. Too often, those on welfare are enmeshed in lives of violence. They are atypical as "battered women." Sometimes, lawyers have believed that my testimony would be detrimental to the defense in that any full discussion of her history would show her to be highly involved in violent familial relationships.

These issues are perplexing. Too narrow a construction of family violence has deprived very poor women of the illumination that social scientists could provide. We must work toward a conception of women as agents because they are agents of their own survival even in oppressive relationships and are at least nominally agentic in their life-taking acts. Much of the existing construction of battered women has been all but tailor made to fit with the view that battered women are reactive, but not active, and so could not be dangerous again, to anyone else.

Issues of future dangerousness of course deserve a place in this work and require our careful and dedicated consideration. Ultimately, we must be prepared to know that some women are dangerous and that some are not. Unfortunately, up until now, too often, poverty has been taken to be a sign of dangerousness. It is difficult to transcend class issues and to achieve a real understanding of the impact of battering by an intimate in the lives of women of different backgrounds. Learning to separate social class issues from dangerousness concerns should provide direction to those of us who would serve justice in cases of battered women who kill their abusers in self defense.